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6 Attorneys for Defendants
 7 CHASE BANK USA, N.A.,
 8 erroneously sued as CHASE
 MANHATTAN BANK USA,
 9 N.A., and JPMORGAN CHASE & CO.

10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

13 DAVID J. LEE and DANIEL R.	)	Case No. CV-07-4732 MJJ
14 LLOYD, individually and on behalf of)	
all others similarly situated,	)	THE HON. MARTIN J. JENKINS
15 Plaintiffs,)	
16 vs.	)	RESPONSE OF DEFENDANT
17 CHASE MANHATTAN BANK U.S.A.,	)	CHASE BANK USA, N.A. TO
18 N.A., a Delaware corporation, CHASE	)	PLAINTIFFS' OBJECTION TO
19 MANHATTAN BANK U.S.A., N.A.	)	CHASE'S STATEMENT OF
20 d.b.a. CHASE BANK U.S.A., N.A.,	)	RECENT DECISION IN SUPPORT
JPMORGAN CHASE & CO., a	)	OF MOTION TO DISMISS;
21 Delaware corporation; and DOES 1	)	ADDITIONAL STATEMENT OF
through 100, inclusive,	)	RECENT DECISION
22 Defendants.)	
	)	DATE: January 29, 2008
	)	TIME: 9:30 a.m.
	)	PLACE: Courtroom 11
		19th Floor
		450 Golden Gate Ave.
		San Francisco, CA 94102

1 Defendant Chase Bank USA, N.A. (“Chase”) hereby submits its Response to
 2 Plaintiffs’ Objection, filed on January 18, 2008 (the “Objection”), to Chase’s
 3 Statement of Recent Decision. Chase also wishes to advise the Court of a very
 4 recent decision by the United States Court of Appeals for the Ninth Circuit, Rose v.
 5 Chase Bank USA, N.A., No. 05-56850 (9th Cir. Jan. 23, 2008).

6 **A. Response To Plaintiff’s Objection.**

7 In its earlier Statement of Recent Decision, Chase brought to the Court’s
 8 attention a recent decision by Judge Charles Breyer, David J. Lee et al. v. American
 9 Express Travel Related Services, Inc. et al., Case No. CV-07-4765 (CRB) (N.D.
 10 Cal. Dec. 6, 2007), which bears directly on the issues in this case. In the American
 11 Express case, Judge Breyer ruled against these exact same Plaintiffs on the exact
 12 same issue presented on Chase’s pending Motion to Dismiss: because they have
 13 never sought to arbitrate anything with their credit card issuers, they lack standing to
 14 challenge any term of the arbitration provisions of the card agreements.

15 Plaintiffs’ Objection is 24 pages long, and was filed long after the principal
 16 briefing has closed. (Chase’s Reply was filed on November 20, 2007). The
 17 Objection argues at length why Judge Breyer’s ruling was incorrect. This is wholly
 18 improper, and violates this Court’s Civil Local Rules, which prohibit Plaintiffs from
 19 attempting to submit additional argument after briefing on Chase’s motion is
 20 complete. Civil Local Rule 7-3(d) provides that, except for communication of a
 21 recent decision issued following the completion of briefing, “once a reply is filed, no
 22 additional memoranda, papers or letters may be filed without prior Court approval.”
 23 As Plaintiffs did not receive leave of Court before filing their 24-page brief, it was
 24 wholly improper for them to do so. Chase respectfully submits that the Objection
 25 should be disregarded in its entirety.

26 If, in spite of the above discussion, the Court is inclined to consider Plaintiffs’
 27 Objection, Chase respectfully requests the opportunity to respond in formal briefing
 28 on a reasonable timetable.

1 **B. Recent Ninth Circuit Authority.**

2 Pursuant to Civil Local Rule 7-3(d), Defendants also call the Court's attention
 3 to a recent published decision by the United States Court of Appeals for the Ninth
 4 Circuit, Rose v. Chase Bank USA, N.A., No. 05-56850 (9th Cir. Jan. 23, 2008)
 5 (attached hereto as Exhibit A). Rose fully supports Chase's position here that
 6 Plaintiffs' claims are preempted by the National Bank Act and federal regulations
 7 promulgated thereunder.

8 Chase relied upon the lower court decision in Rose (396 F. Supp. 2d 1116) on
 9 pages 14-15 of its Motion to Dismiss. Now the Rose ruling has been affirmed in its
 10 entirety, and confirms that California's Unfair Competition Law, Cal. Bus. & Prof.
 11 Code § 17200 et seq., may not be employed to force a national bank to rewrite the
 12 disclosures it provides in connection with its credit cards. Nor may a national bank
 13 be held liable under the Unfair Competition Law on the theory that its disclosures to
 14 credit card holders are "deceptive" or "unfair."

15 Although Chase contends that Plaintiffs lack standing to pursue this action, if
 16 the Court should find that Plaintiffs do have standing, their claims are preempted
 17 under Rose, and a dismissal with prejudice should be entered.

18 Dated: January 24, 2008

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22 By: s/Stephen J. Newman
 23 Stephen J. Newman

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